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January 16, 2014

**VIA ECF**

Honorable J. Paul Oetken  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007 1312

RE: Freeplay Music, LLC v. Makita U.S.A., Inc.  
S.D.N.Y. Case No. 13 cv 05235 (JPO)

Dear Judge Oetken:

This firm represents the Plaintiff, Freeplay Music, LLC (“Freeplay”) in the above-referenced matter. Freeplay is filing this letter motion pursuant to Rule 4B(iii) of your Individual Practices in Civil Cases to seek leave to amend the Second Amended Complaint (“SAC”) because the time to amend the SAC as of right under Federal Rule of Civil Procedure 15 has expired.

On November 15, 2013, your Honor granted Freeplay leave to amend to file the SAC on or before December 2, 2013, in part, to name an additional defendant, Makita Corporation. Existing defendant Makita USA, Inc.’s time to respond to the SAC was extended to January 21, 2014.

On January 9, 2014, counsel for defendant Makita U.S.A., Inc. sent a letter to this firm, pursuant to Rule 4B(i) of your Individual Practices in Civil Cases, alleging certain pleading deficiencies in the SAC and certain defects in service of Makita Corporation, and advising Freeplay that Makita U.S.A., Inc., intends to file a motion to transfer to the Central District of California. Although Freeplay does not concede that there are any deficiencies in the SAC, Freeplay respectfully requests leave to amend the SAC to address the alleged “defects” and thereby avoid unnecessary motion practice.

This request has been discussed with counsel for Makita U.S.A., Inc., who we understand will also be representing Makita Corporation. Counsel has no objection to Freeplay’s request for leave to amend the SAC and intends to argue that any allegations that are not properly pled in the Third Amended Complaint should be dismissed with prejudice. If leave to amend is granted, Freeplay intends to file the Third Amended Complaint within fourteen days of the Court’s order.

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We thank the Court for its consideration of this request. Please feel free to contact the undersigned should you have any questions or wish to discuss the matter further.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Seth L. Berman", with a stylized, flowing script.

Seth L. Berman

SLB/dm